IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3220 OF 2005

Shri. S.T. Gawade ... Petitioner
Versus
State of Maharashtra and Ors. ... Respondents

ALONG WITH

WRIT PETITION NO. 3245 OF 2005

Shri. V.V. Deshmukh ... Petitioner
Versus
State of Mah. and Ors. ... Respondents

Mr. S.B. Deshpande for Petitioners.

Mr. R.D. Rane, Government Pleader for R. Nos. 1 and 2.
Mr. R.V. More for R. Nos. 3 and 4.

CORAM : F.I. REBELLO &
DR.D.Y.CHANDRACHUD,JJ.
DATED : FEBRUARY 20, 2006

P.C.

. The Petitioners were holding the posts of Under Secretaries in the Legislature Department. Two vacancies arose for the post of Deputy Secretaries one in December, 2003 and the second in July, 2004. Both the vacancies were to be filled in by promotion. The Committee known as the Selection Board hereinafter referred to as the Board which then met, selected Respondent Nos. 3 and 4 to the post of Deputy Secretaries. Hence, the present

petition by the Petitioners who were considered for promotion but not selected.

. A reply was filed by Shri. Vilas Patil Principal Secretary, Maharashtra Legislative Secretariat. In the reply filed, in Paragraph 3, the comparative merit of five previous years of six candidates who were considered was set out. The comparative merit of Shri. Bagul shows five "A+". Shri. Mohite had 4 "A+" and one "B". Shri. Deshmukh had 3 "B+" and 1 "B-" and 1 "B" and Shri. Joshi had 2 "A"s and 3 "B"s.

. On account of these grades, prima facie Shri. Joshi was less meritorious than Shri. Mohite. The learned Govt. Advocate was asked whether the Board could consider a Review as it pertains to employment under the State and the procedure for selection was to be based on the rules in force. The Board consists of the Hon’ble Speaker of the Legislative Assembly and the Hon’ble Chairman of the Legislative Council. Mr. Rane, The Government Pleader has produced a communication dated 17.2.2006, that the Board had met and the Board

found that Shri. Bagul possesses overall outstanding C.R. i.e. "A+" for the last five years and as such that decision need not be changed.

. In so far as Mr. Joshi is concerned, the communication points out that he does not have the minimum average gradation for the last five years i.e. "A" and that Mr. Mohite is the only Under Secretary who possesses the average gradation of C.R.s for the last five years as "A" and hence, he should be promoted to the post of Deputy Secretary and as such the Review D.P.C. has considered to promote Mr. Bagul and Mr. Mohite. In order to avoid financial hardship, the decision was taken to send Mr. Joshi back from the date of final decision of this petition. In other words, no recovery will be made from Mr. Joshi for the period in which he has held the post of Deputy Secretary.

. Shri. Gawade, the Petitioner in Writ Petition No. 3220 of 2005 cannot be also averaged as A, as Shri Gawade had one A, one B+ and three B. When

the matter came up for hearing, one of the grievances made on behalf of Mr. Deshmukh that the C.R. of the year 2003-2004 which had given him grading of "B-" was not communicated to him. The Petitioner was permitted to make representation. Even otherwise we can proceed on the footing that an uncommunicated adverse C.R. need not be considered.

. At the hearing of this petition, on behalf of the Petitioner, it was firstly contended that considering the recruitment rules for appointment to the post of Deputy Secretary, seniority cum fitness ought to have been the criteria. On behalf of the respondent No. 1 a reply has been filed. It may be mentioned that the recruitment rules as amended were notified on July, 2004 whereby for the post of Deputy Secretary, promotion is based on merit cum seniority. Even otherwise, in the affidavit filed by Mr. Patil, it is pointed out that in case there were no rules for promotion in the Legislature Secretariat, the procedure followed was to follow the State Secretariat rules and in so

far as post of Deputy Secretary in the State Secretariat is concerned, the procedure for selection was merit cum seniority. There was no procedure prescribed for Dy. Secretary in the rules. In the absence of any rules, it is always open to consider by adoption the rules which are in force in the secretariat. Apart from that the rules were amended by notification dated 6th July, 2004 and the Board for selection met on 6th July, 2004. Once that be the case, we do not find any fault in so far as consideration of the cases of the eligible candidates for the promotion based on merit cum seniority.

. On behalf of Mr. Deshmukh, their learned counsel also contended that adverse C.R. for the year 2003-04 was not communicated to him and as such the same ought not to have been considered. Even if the C.R.s for 2003-2004 are ignored being uncommunicated C.R., Mr. Deshmukh would get 3 "B+" and 1 "B".

. Our attention is next invited by the learned counsel of Mr.Joshi to the G.R. dated 23.12.2002.

Considering that G.R. promotions after the first stage in Grade A are made on the principle of strict selection with due regard to the seniority. The criteria for average gradation of the C.R.s. are as under :

. For promotion to posts in Grade A, where minimum stage of pay scale is upto Rs.16,399/-, the average gradation for the C.R.s of five years should be at least B+. In case of posts to Group "A" where the minimum stage of pay scale is upto Rs.16,400/- the average gradation for the last five years should be "A".

. In the instant case, in terms of the recruitment rules, the pay scale of the Deputy Secretary is Rs.12000-16500, in other words, more than Rs.16400/-. The Benchmark therefore, would be "A" as has been considered by the Board.

. It was then submitted that because the candidates selected were on deputation, they were given better rating in the C.R.s than those working in the department. There are no allegations of

malafides nor for that purpose has any person has been personally joined as respondent in these petitions contending mala fides. In the absence of that, it will not be possible to consider the said contention.

. Even though, an employee may be on deputation, when posts have to be filled in by promotion in the parent cadre, even those candidates on deputation have to be considered. In these circumstances, the review D.P.C. was right in considering also the persons who were on deputation and of considering the C.R.s during the period they were working on deputation.In fact they were working on a higher pay scale than that of an Under Secretary.

. Considering that no case made out for interference in the extra ordinary jurisdiction of this court. Petition dismissed.

(F.I. REBELLO,J.)

(DR. D.Y. CHANDRACHUD,J.)